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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 1, 2001

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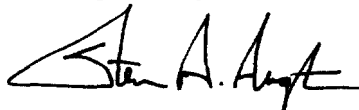
Re: **Ex Parte; Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996 – CC Docket No. 96-98**

Dear Ms. Salas:

Enclosed please find an original and one copy of a Letter, with an Attachment,  
addressed to Dorothy Attwood, Chief of the Common Carrier Bureau, which should be included  
in the above-referenced proceeding.

Please acknowledge receipt by date-stamping the enclosed extra copy of this  
filing and returning it to me in the envelope provided. Please direct all questions regarding this  
filing to Steven Augustino at (202) 955-9608 or Darius Withers at (202) 955-9774.

Respectfully submitted,



Steven A. Augustino  
Darius B. Withers

Enclosures (as noted)

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**Ex Parte: Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996 – CC Docket No. 96-98**

Dear Ms. Attwood:

As you are aware from the competitive industry's discussions with you and the Commission's staff, the ability of competitive local exchange carriers ("CLECs") to obtain access to Enhanced Extended Links ("EELs") has been constrained severely by the obstructive tactics of the incumbent local exchange carriers ("ILECs"). Most importantly, since the EEL requirement became effective over eighteen months ago, conversions of ILEC special access circuits to EELs essentially have been stalled in large part because of the ILECs' refusal to allow conversion of special access circuits to EELs where the transport and entrance facility component of the circuit includes multiplexing. The ILECs, without justification, have alleged that such conversions would involve prohibited "co-mingling."

It is our understanding that the Commission is in the process of preparing an Order to address ongoing problems with respect to application of the temporary co-mingling language in the *Supplemental Order Clarification*. CLECs sincerely appreciate this effort and wish to provide the Commission with further insight and guidance on the dimensions of at least one aspect of the existing controversy. While expeditious resolution of the existing controversy is essential, the Commission can assist carriers most effectively by fully addressing the channelized facilities arguments raised in this proceeding and used by the ILECs to moot the Commission's requirement that they convert existing special access circuits to EELs upon request. We believe the following discussion will provide the Commission with an

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understanding of the existing state of EEL conversions and the need for immediate solutions to the problems facing CLECs.

One typical special access configuration that CLECs seek to convert to EELs consists of a DS1 channel termination (also known as a tail) multiplexed on to a DS3 inter-office transport facility. This configuration, when converted to a UNE DS1 loop and UNE DS3 inter-office transport with associated 3:1 multiplexing, offers CLECs a cost-efficient option to provide end-users with competitively priced services. The Attachment to this letter presents a diagram of this network architecture. As the diagram illustrates, it is common for CLECs to aggregate DS1 channel terminations/tails at the first ILEC central office and to multiplex those channel terminations/tails onto higher capacity transport for transmission back to a point of switching (sometimes passing through another central office on the way). Notably, CLECs often will choose to purchase a DS3 for transport even if current traffic demands and forecasts suggest that such a circuit may be less than fully utilized. This is the case because CLECs can realize cost savings (compared to ordering multiple DS1 transport circuits) by using DS3s with utilization of as few as ten (10) of the twenty-eight (28) individual DS1 channels.<sup>1</sup> CLECs will use the remaining channels for other purposes (e.g., 911, TRS and SS7 traffic).

Due to this practice, a DS1 circuit a CLEC wishes to convert to an EEL often includes an inter-office transport component that rides a DS3 transport "facility" along with multiple other DS1 circuits that may or may not be designated for conversion from special access to UNEs as part of an EEL. We refer to this practice as "Channelized Facility Usage". Notably, channelized facilities "exist" separately both for network planning and billing purposes.<sup>2</sup> For example, the separable nature of a facility allows ILECs to bill CLECs at different rates for each circuit within a channel based upon whether the circuit is deemed to be a switched or a special access circuit (which are tariffed at different rates). This practice is commonly known as "ratcheting." To date, however, ILECs have prevented CLECs from converting EELs that traverse mixed-use DS3s and implementing billing in this manner. As a result, CLECs currently are unable to optimize the use of their networks in the same manner that ILECs optimize their own networks.

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<sup>1</sup> See SBC/ Ameritech Operating Companies Tariff F.C.C. No. 2, Access Service, Special Access Service, Rates and Charges; *compare* Ameritech DS1 Service, Local Distribution Channel - Terminating Bit Rate, 1.544 Mbps, 12 Mo. Recurring Charges, Section 7.5.9 (B)(1) *with* Ameritech DS3 Service, Local Distribution Channel - Terminating Bit Rate, 44.736 Mbps, 12 Mo. Recurring Charges, Section 7.5.9 (C)(1); *see also* BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, Access Service, Special Access Service, Rates and Charges; *compare* High Capacity Service, Nonrecurring Charge, DS1 Service, Month to Month, Section 7.5.9(A)(1) *with* High Capacity, Nonrecurring Charge, LightGate 1 service (a.k.a. DS3 Capacity) System, Section 7.5.9(A)(3)(a).

<sup>2</sup> Indeed, often the "DS3" used by the CLEC is itself merely a channelized facility. That is, many times the ILEC deploys an OC12 or OC48, which is separated into DS3 channels that are separately assigned and separately billed to each CLEC using the facility.

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We understand that some ILECs have been reporting that they are converting special access circuits to EELs. The fact is, however, that *more than a year after the effective date of the UNE Remand Order*, ILECs have converted very few of the special access circuits that CLECs have requested they convert to EELs. The record in this proceeding is rife with documentation regarding the problems faced by CLECs seeking to convert special access circuits to EELs.<sup>3</sup> By contrast, the record contains little evidence of ILEC compliance with the Commission's mandate that they convert special access circuits to EELs upon a CLEC's self-certified request. For example, during the Common Carrier Bureau's EEL Provisioning Workshop on February 14, 2001, Qwest claimed that it had installed only thirty-five (35) EEL circuits *—in its entire region.*<sup>4</sup> Rather than showing compliance, this number is indicative of the massive denials by Qwest and other ILECs. Qwest rejected 200 of 205 circuits e.spire Communications, Inc. submitted for conversion to EELs, based upon Qwest's belief that the circuit requests constitute "co-mingling." Moreover, by its own admission, as of April 5, 2001, Qwest, continues to "pre-qualify" XO Communications' request to convert 26 special access circuits.<sup>5</sup>

Similarly, although Verizon claimed that it has "been working closely with a number of CLECs to convert circuits that meet the conditions specified in the FCC's orders," it has to date been unable to cite any special access circuits it has converted to EELs.<sup>6</sup> Indeed, Net2000 has filed a complaint before the Enforcement Bureau regarding Verizon's failure to convert over 1000 circuits to EELs.<sup>7</sup> SBC's performance (or more precisely, lack of performance and failure to comply with the Commission's conversion rules) has been only slightly less impressive. The record reveals that SBC/Southwestern Bell Telephone Company ("SBC/SWBT") took no actual steps to implement the Commission's EEL ordering requirements until December 27, 2000 — nearly a year after the requirements went into effect.<sup>8</sup> Moreover, SBC only responded to CLEC concerns regarding SBC's particular ordering and provisioning

<sup>3</sup> See, e.g., Joint Comments of Cbeyond Communications, Inc. *et al.*, CC Docket No. 96-98 (April 5, 2001); *Ex Parte* Statement of ALTS to Jodie Donovan-May, Federal Communications Commission, Common Carrier Bureau, CC Docket No. 96-98 (Dec. 22, 2000)(discussing the myriad of problems faced by CLECs in obtaining EELs).

<sup>4</sup> See *Ex Parte* Submission of Qwest's Perry Hooks, "EELs Fact Sheet", February 14, 2001 (submitted during the Commission's EEL Provisioning Workshop).

<sup>5</sup> See *Ex Parte* Letter of Melissa E. Newman, Qwest to Jodie Donovan-May, Federal Communications Commission, Common Carrier Bureau, CC Docket No. 96-98 (Apr. 5, 2001).

<sup>6</sup> See Letter of W. Scott Randolph, Verizon to Jodie Donovan-May, Federal Communications Commission, Common Carrier Bureau, CC Docket No. 96-98 (Jan. 12, 2001).

<sup>7</sup> See *Net2000 Communications Services, Inc. v. Verizon-Washington, D.C., Inc. et.al*, File No EB-00-MD-018 (filed Nov. 1, 2000).

<sup>8</sup> See Letter of Geoffrey M. Klineberg to Magalie Roman Salas, CC Docket No. 00-217 (Dec. 27, 2000) (*ex parte* presentation detailing SBC/ SWBT modified policy and process for converting special access circuits to EELs in response to comments filed by e.spire Communications, Inc.).

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process in February 2001.<sup>9</sup> The “revised” process still requires a CLEC to subject itself to a burdensome SBC-controlled project timeline. Conveniently, SBC fails to mention that the Commission’s Enforcement Bureau accepted a complaint in an Accelerated Docket proceeding regarding SBC’s unlawful use of a two-step EEL conversion process.<sup>10</sup> Although that particular conversion request was settled by the parties, SBC has made little if any progress in converting additional EEL orders.

If the Commission were to adopt the various misinterpretations of its temporary use restrictions proposed by the ILECs, the result, for all practical purposes, would severely constrain all CLECs’ abilities to utilize EELs under many, if not all, circumstances. ILECs advocate that CLECs radically re-configure and re-construct their networks simply to satisfy their interpretation of the Commission’s regulatory requirements. If the ILECs’ views were to prevail, CLECs would have to operate two separate and entirely redundant local networks, one to carry UNE-only traffic and one to carry all other traffic, including ancillary traffic such as 911, TRS and SS7 traffic. In doing so, CLECs often would lose the efficiencies of high capacity transport, and would likely have significant unused capacity in *both* of the networks they would have to construct. Frankly, the creation of redundant networks undermines the Commission’s intent to provide CLECs -- via EELs -- with a more cost-efficient means to serve local markets.

At bottom, the ILECs are engaging in regulatory gamesmanship, legal “hair-splitting”, and false allegations of “CLEC misinterpretation” as a means of preventing CLECs from using EELs to provide competitive local services to consumers. In light of these anticompetitive practices, CLECs propose that the Commission acknowledge and emphasize in a further clarification EEL Order, at a minimum, the following three points:

**(1) Channelized Facility Usage Is Not Co-Mingling**

As an initial matter, the signatories hereto do not believe use restrictions are advisable as a matter of general policy, nor are the temporary restrictions necessary to achieve the Commission’s stated policy goals. Nevertheless, if the Commission chooses to retain the use restrictions, it should make clear that DS1 circuits which meet the local usage restrictions remain eligible for conversion even if the inter-office transport or entrance facility segment used to carry the circuit continues to carry special access traffic alongside it. Specifically, the CLECs signing below request that the Commission clarify that ILECs must convert DS1 circuits to EELs, even in cases where the inter-office transport component of that EEL is provisioned over a DS3 (or

<sup>9</sup> See Accessible Letter from SBC/SWBT Regarding Revision of Ordering Process for Special Access to Unbundled Network Elements Conversions, dated February 1, 2001 (“SBC Accessible Letter”); see also *Ex Parte* Presentation of SBC, CC Docket No. 96-98 (Feb. 13, 2001).

<sup>10</sup> See Letter from Frank G. Lamancusa, FCC, to James C. Falvey, e.spire Communications Inc., and Gary L. Phillips, SBC Telecommunications, Inc., Re: Potential Accelerated Docket Matter, dated February 22, 2001 (granting e.spire’s request to file a complaint against SBC for imposing unreasonable conditions for conversion of special access to EELs under the Commission’s accelerated docket).

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higher capacity facility) that also is used to carry DS1 circuits not designated for EEL conversion. This type of configuration, "Channelized Facility Usage," allows inter-office transport to be used to more efficiently, by allowing excess capacity to be used for non-local special access, for switched access, or for other purposes. This network configuration is *not* prohibited co-mingling and we respectfully implore the Commission to make this clear in any Order regarding EELs.

In the June 2, 2000 *Supplemental Order Clarification*, the Commission established a set of three local use restrictions for EEL conversions. None of these local use restrictions use the term "co-mingling." None prohibit Channelized Facility Usage. Instead, each local use test prohibits only the connection of an EEL to a tariffed service. The ILECs, however, have mistakenly relied on language in Paragraph 28 of the *Supplemental Order Clarification*, to turn the Commission's local use restrictions into a mandate that CLECs operate wholly separate inter-office transport networks. Contrary to the ILECs' claims, this paragraph does not add a restriction on use, rather the paragraph merely stated that the Commission would not (at that time) "eliminate the prohibition on 'co-mingling' (*i.e.*, combining loops or loop-transport combination with tariffed special access services) in the local usage options, *described above*."<sup>11</sup> The prior discussion to which this passage refers are the safe harbors themselves which, as noted, only contain a mention of connecting a tariffed access service to an EEL. Thus, this reference to co-mingling – the only reference in the *Supplemental Order Clarification* – must be read consistently with the three significantly local tests themselves.<sup>12</sup> The CLECs signing below submit that the only way to do this is to interpret "co-mingling" as it is explained in the three safe harbors, not with the additional reach to Channelize Facility Use that the ILECs ascribe to it.

In order to fulfill the promise of EELs as the Commission intended, the Commission should clarify its local use restrictions by requiring ILECs to convert EELs when the loop-transport combination employs Channelized Facility Usage. Any order should explicitly state that for a given DS1/DS3 combination requested to be converted, the ILEC may not reject based on the claim that other DS1s on the transport or entrance facility component do not themselves meet the usage restrictions. That is, if the CLEC certifies that the DS1/DS3 combination serving the end user in question satisfies one of the local use restrictions, the ILEC must immediately convert the combination to an EEL. The presence of non-converted DS1s within the same facility is simply irrelevant for purposes of applying the local use restrictions identified in the *Supplemental Order Clarification*.

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<sup>11</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, 9602, ¶ 28 (2000) ("*Supplemental Order Clarification*").

<sup>12</sup> See *Supplemental Order Clarification*, 15 FCC Rcd at 9599-9600, 9602, ¶¶ 22, 28.

***(2) Pricing for Transport Segments that Contain Both Special Access  
and EEL Circuits Should Be Pro-Rated***

The CLECs signing below do not suggest that Channelized Facility Usage should entitle the CLEC to UNE pricing for the entire DS3 facility, even those channels that do not satisfy one of the local use restrictions. Rather, appropriate pricing for transport segments that contain both special access and EEL circuits can be accomplished through the use of a pro-rated pricing mechanism similar to ratcheting. Using this approach, a DS1 EEL circuit carried over a DS3 would be priced at UNE rates, while any non-converted DS1s carried over the DS3 would be charged at appropriate tariffed rates for those services. ILECs have suggested, mistakenly, that this pricing practice would allow CLECs to obtain use of special access circuits at UNE pricing. The CLECs signing below emphasize that their proposal would only allow that portion of the DS3 channel that includes DS1 circuits designated for conversion to EELs to be subject to UNE pricing. CLECs are willing to pay applicable tariffed rates for those DS1 circuits on the DS3 circuit that they do not designate for conversion to EELs. Moreover, the ILECs are quite familiar with the practice and mechanics of ratcheting as it is included currently in their tariffs as a pricing mechanism for a combination of switched and special access channelized facilities provisioned over a larger facility. ILECs are therefore more than able to impose different rates for EEL and special access circuits of traffic sent over the same DS3 transport segment.

***(3) ILECs May Not Impose Early Termination Term Commitment Penalties When a  
CLEC Chooses to Convert Certain DS1 Circuits Carried Over a DS3 Transport  
Segment to an EEL Arrangement***

The practice of ratcheting, as currently provided for by the ILECs in their tariffs for switched and special access services, does not trigger the end of a term commitment and ILEC customers do not suffer the imposition termination penalties upon implementing a ratcheting arrangement. CLECs, therefore, urge the Commission to declare that the conversion of the DS1 circuits carried over a DS3 transport segment (with associated pro-rated pricing) does not constitute premature termination of the tariffed DS3. In fact, use of the DS3 is never actually terminated.<sup>13</sup> ILECs will continue to enjoy revenue from a CLEC's use of the DS3 facility, thereby rendering moot the rationale for imposing termination liabilities on a CLEC customer. Thus, if CLECs are provided the opportunity to ratchet the pricing on these DS3s to reflect conversions to EELs of certain DS1s carried over the DS3, any further Order should also prohibit ILECs from imposing termination liabilities against CLECs.

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<sup>13</sup> Of course, if the DS1 "tail" circuit is on a term plan, applicable termination penalties for that circuit would apply.

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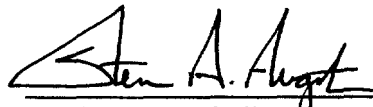
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As is to be expected, the ILECs' view of the Commission's temporary EEL use restrictions will benefit only ILECs and will increase CLECs' costs of competing in the local services market. A significant majority of the current EEL conversion disputes relate to the conversion of DS1 circuits wherein the inter-office transport or entrance facility component is carried over a larger DS3. Therefore, if the Commission declines to address this issue in a forthcoming Order, there may be no meaningful increase in EEL conversions. As the record reveals and described herein, to date, there has been little if any evidence of EEL conversions. Such a result negates the Commission's underlying goal to make EEL pricing available to CLECs and increase competition in the local exchange market.

Critically, we submit that this relief should not be granted in the form of an Order stating that the Commission will "forbear" from enforcing co-mingling restrictions, as such an Order would imply that the ILECs appropriately have refused to convert multiplexed circuits in the past. Rather, we respectfully submit and request that the Commission issue an appropriate Order clarifying that multiplexing circuits onto a channelized facility as discussed above does *not* constitute prohibited "co-mingling" as discussed in its prior Orders.

We trust this explanation is helpful and are available to answer any questions or concerns you may have regarding this proposal.

Respectfully submitted,



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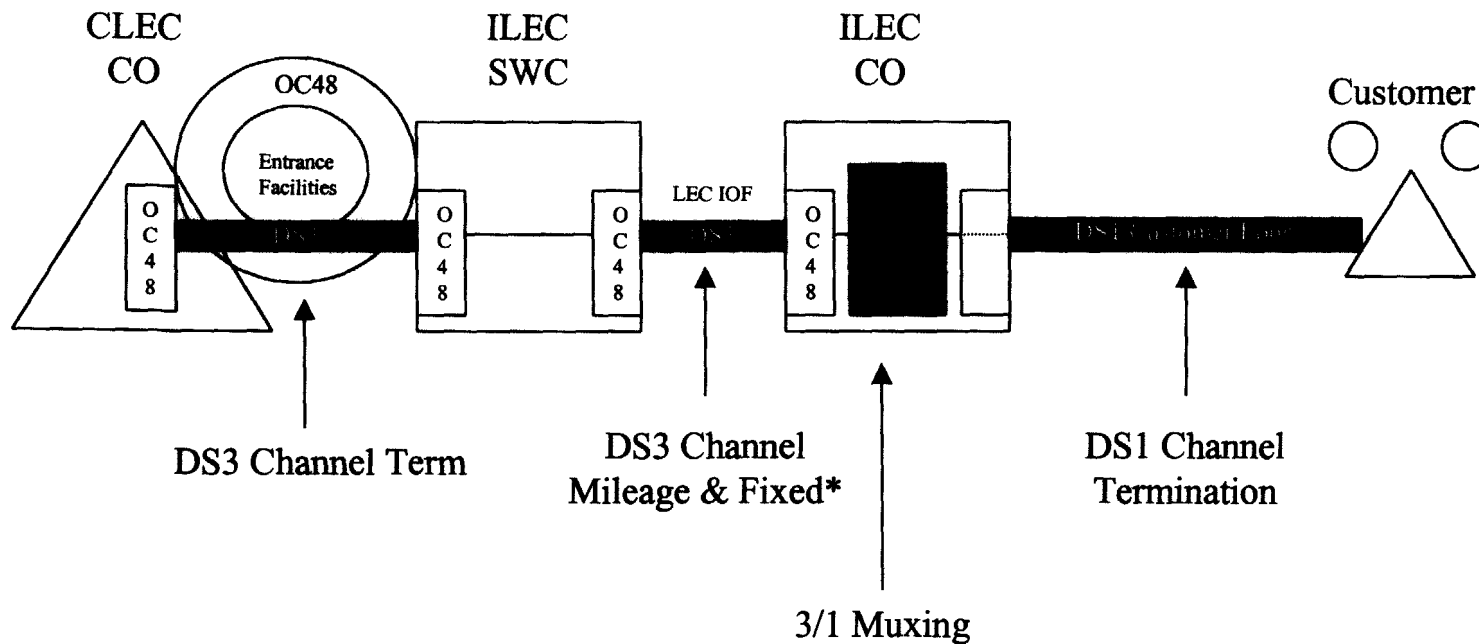
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## Typical DS1/DS3 EEL Topology



\*Note: IOF may be further multiplexed at one or more additional ILEC COs.